



## **DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

### **10 CFR Part 1703**

**[Docket No. DNFSB-2024-01]**

#### **Freedom of Information Act Fee Schedule**

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Defense Nuclear Facilities Safety Board (DNFSB or Board) is proposing to revise its Freedom of Information Act (FOIA) fee schedule and to make conforming amendments to two related provisions of its FOIA regulations.

**DATES:** To be considered, comments must be submitted by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit written comments by either of the following methods:

- *Email:* Send comments to [comment@dnfsb.gov](mailto:comment@dnfsb.gov). Please include “FOIA Fee Revision” in the subject line of your email.
- *Mail or Hand Delivery:* Send hard copy comments to the Defense Nuclear Facilities Safety Board, Attn: General Manager, 625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004-2901.

**FOR FURTHER INFORMATION CONTACT:** Tayrn L. Gude, Director, Division of Operational Services, Office of the General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, (202) 694-7000 (Toll Free (800) 788-4016.)

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Freedom of Information Act requires Federal agencies to which it applies to publish a schedule of the costs that they may charge for the expenditures incurred in responding to requests for their records. Guidelines published by the Office of Management and Budget assist agencies in meeting that requirement and provide a structure for its consistent implementation across the Executive Branch, 5 U.S.C. 552(a)(4)(A)(i), and “Uniform Freedom of Information Act Fee Schedules and Guidelines,” 52 FR 10012 (March 27, 1987), Revised 85 FR 81955 (Dec. 17, 2020), respectively. In accordance with those authorities, the Board’s FOIA regulations require it to publish and regularly update a schedule identifying the expenditures it might seek to recover and the cost associated with each request. 10 CFR 1703.107(b)(6).

Since implementing its FOIA program, 56 FR 21261, May 8, 1991, DNFSB has calculated the fees charged for document search and review time based on the average hourly pay rate of its employees, plus the average hourly projected benefit cost. DNFSB has charged the costs of reproducing records directly to the requester either at the actual cost to the agency, or the amount charged by a commercial service. As of its most recent update, 80 FR 52174, Aug. 28, 2015, DNFSB’s schedule of fees is as follows:

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Search or Review Charge.....	\$85.00 per hour
Copy Charge:	
Paper.....	\$.05 per page, if done in-house, or generally available commercial rate, approximately \$0.10 per page
Electronic Media.....	\$5.00 per electronic media
Audio and Video Cassettes.....	Actual commercial rates
Duplication CD or DVD.....	\$25.00 for each individual DVD; \$16.50 for each duplicate DVD
Large Documents, <i>e.g.</i> , maps....	Actual commercial rates

or diagrams

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## **II. Overview of Proposed Rule**

In this action, DNFSB is proposing the following changes to the FOIA fee schedule:

1. Incorporating a schedule of fees in DNFSB's FOIA fee regulation (at 10 CFR § 1703.107(b)(6)), rather than publishing the fees in a separate, non-codified Federal Register publication;
2. Separating the fee schedule for both manual and electronic record searches; and
3. Including the direct cost of computer time into the cost of electronic record searches; and,
4. Changing the basis used for calculating the cost of the time spent by employees searching for and/or reviewing records in response to FOIA requests.

Pursuant to this proposal, those costs will be calculated using the actual salary rate(s) (*i.e.*, basic hourly rate of pay plus an additional 16 percent for benefit costs) of the employee(s) performing the work. DNFSB currently uses the average of all employees' hourly pay rates plus average projected benefit costs as the basis for determining fees. DNFSB finds that the methodology should be changed for several reasons. First, basing costs on the salary of the employee performing the work is more precise than basing them on an agency-wide average pay rate. Second, basing costs on the salary of the employee accurately reflects the actual costs incurred by the agency in searching for and reviewing responsive documents. Finally, it will eliminate the need to annually *republish* the FOIA fee schedule to account for the changed amount of the average employee salary resulting

from Congressional changes to rates of pay, the number of agency employees, and their job classifications.

In this action, DNFSB is also announcing a proposal to amend the following four subsections of its FOIA fee regulation, 10 CFR § 1703.107, to reflect the agency's adoption of actual salary cost(s) of the employee(s) performing document search and review activities for calculating response costs to be charged to requesters:

1. § 1703.107(b)(1) "*Direct Costs*"
2. § 1703.107(b)(2)(i) "*Fees*" (commercial use requests)
3. § 1703.107(b)(2)(iii) "*Fees*" ("other" requesters)
4. § 1703.107(b)(6) "*Annual adjustment of fees*"

## **II. Regulatory Analysis**

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations, and local governments) when publishing regulations subject to the notice and comment requirements of the Administrative Procedure Act. These proposed regulations pertain to the Board's policies and practices for processing FOIA requests, and do not impose any new requirements on small entities. Therefore, no analysis is required by the Regulatory Flexibility Act.

### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### *Paperwork Reduction Act*

This rule contains no new reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 et seq. This update to the Board's FOIA regulations does not require or request information from members of the public.

Therefore, this rulemaking is not covered by the restrictions of the PRA.

### *Executive Order 12988 – Civil Justice Reform*

These proposed regulations meet the applicable standards set forth in Executive Order 12988.

### *Executive Order 13132 – Federalism*

According to Executive Order 13132, agencies must state in clear language the preemptive effect, if any, of new regulations. The amendments to the Board's FOIA regulations affect only how the Board responds to requests for information and have no effect on preemption of State, tribal, or local government laws or otherwise have federalism implications.

### *Congressional Review Act*

This is a rule under the Congressional Review Act. The Board will send a copy of this rulemaking to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

### **List of Subjects in 10 CFR Part 1703**

Freedom of Information.

For the reasons discussed in the preamble, the Defense Nuclear Facilities Safety Board proposes to amend 10 CFR part 1703 as follows:

1. The authority citation for part 1703 continues to read:

Authority: 5 U.S.C. 301, 552; 31 U.S.C. 9701; 42 U.S.C. 2286b.

2. Amend § 1703.107 by revising paragraphs (b)(1), (b)(2)(i), (ii), (iii), and (b)(6) to read as follows:

#### **§ 1703.107 Fees for record requests.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

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*Direct costs* mean those expenditures which DNFSB incurs in search, review, and duplication, as applicable to different categories of requesters, to respond to requests under § 1703.105. Direct costs include, for example, the hourly salary and projected benefits costs of agency employees who search for, review, or duplicate records in response to a request. Overhead expenses such as cost of space, and heating or lighting the facility in which DNFSB records are stored are not included in direct costs.

\* \* \* \* \*

(2) *Fees.* (i) If documents are requested for commercial use, DNFSB shall charge the hourly salary and projected benefits costs of agency employees who search for and review records in response to a request, and for the costs of duplication as set out in subsection (b)(6) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, DNFSB's charges shall be limited to the direct costs of duplication as set out in subsection (b)(6) of this section.

(iii) For a request not described in paragraphs (b)(2) (i) or (ii) of this section, DNFSB shall charge the hourly salary and projected benefits costs of the agency's employee(s) who search for records in response to a request and the direct costs of duplication as set out in subsection (b)(6) of this section. There shall be no charge for document review time, and the first 100 pages of reproduction and the first two hours of search time will be provided without charge.

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(6) *Schedule of Fees.* (1) To the extent authorized by these regulations, DNFSB is authorized to seek the following fees to recover costs incurred in responding to FOIA requests:

(i) Document Search Charges

(A) Manual	Salary rate(s) (basic hourly pay plus 16 percent) of employee(s) performing records search or review
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(B) Electronic	Salary rate(s) (basic hourly pay plus 16 percent) of employee(s) performing search or review
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(ii) Document Review Charges	Salary rate(s) (basic hourly pay plus 16 percent) of employee(s) performing search or review
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(2) DNFSB will charge requesters who seek records for commercial purposes for the cost of reviewing them to determine whether they are exempt from mandatory disclosure. The agency will assess these charges only when the records are first analyzed to determine the applicability of a specific exemption to a record or portion thereof. DNFSB will not charge for the review of an exemption previously applied at the administrative review level. If a record or portion thereof was withheld in full under an exemption that is subsequently found inapplicable, it may be reviewed again to determine the applicability of other exemptions not previously considered. DNFSB may charge for the cost of such review.

### (3) Copying Charges

- |                                                     |                                                                                                          |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| (i) Paper                                           | \$ .05 per page, if done in-house, or generally available commercial rate, approximately \$0.10 per page |
| (ii) Electronic Media                               | Direct cost, including operator time<br>(employee's basic hourly pay plus 16 percent)                    |
| (iii) Audio and Video Cassette                      | Actual commercial rates                                                                                  |
| (iv) Duplication of CD or DVD                       | Direct cost, including operator time<br>(employee's basic hourly pay plus 16 percent)                    |
| (v) Large Documents, <i>e.g.</i> , maps or diagrams | Actual commercial rates                                                                                  |

Dated: November 8, 2023.

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Joyce Connery,  
*Chair.*

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